

REMARKS

Claim 1 has been amended by incorporating the subject matter of claim 6 into it. Accordingly, claim 6 has been canceled.

Also, claim 1 has been amended in a non-limiting manner by deleting the repetitive material at pages 7-13 of this paper.

New claim 56 corresponds to the subject matter of previously pending claims 1, 6 and 8. Accordingly, claim 8 has been canceled.

Finally, claims 3, 51 and 55 have also been canceled.

Claims 1, 2, 4, 7, 9-50, 52-54, 55 and 56 are currently pending, although claims 7, 9, 16-18 and 49-54 have been withdrawn from consideration. Upon indication of allowable subject matter, Applicants intend to seek rejoinder of withdrawn claims as appropriate.

The Office Action rejected the pending claims under 35 U.S.C. §112, first paragraph, asserting that the claims fail to meet the written description requirement. In view of the cancellation of the material at pages 7-13 of this paper (which was inadvertently “cut and paste” twice into claim 1 in a previous response), Applicants respectfully request reconsideration and withdrawal of this rejection.

The Office Action also rejected the pending claims under 35 U.S.C. §112, second paragraph, asserting that the claims are indefinite. In an attempt to address this rejection, the claims have been amended so that they are directed to a kit containing two distinct compositions. (See, for example, page 4, lines 14-21 and the examples of the present application for support). Thus, the claims are directed to a kit

containing two separate compositions. In view of the foregoing comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

The Office Action also rejected the pending claims as obvious under 35 U.S.C. § 103 over U.S. patents 6,627,121 (“Krongauz”), 6,123,952 (“Lagrange”) and 6,369,147 (“Polonka”). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

The claimed invention relates to a makeup kit comprising two cosmetic compositions, the first composition comprising at least one first dye in a physiologically acceptable medium, the second composition comprising at least one second dye in a physiologically acceptable medium, the first dye being photochromic and the second dye being at least one goniochromatic coloring agent. The art upon which the Office Action has relied neither teaches nor suggests the claimed invention, or any of these benefits associated with the invention kits.

Regarding Krongauz, Krongauz does not reach or suggest the required photochromic dyes. For example, in formula (Ia) of the claims, the naphthopyran moiety is never substituted with a benzyl group in position 8. Similarly, with respect to formula (IIa) of the claims, the oxygen atom is not at the same position, and the resulting naphthopyran moiety is never substituted with a benzyl group. Thus, the claimed dyes differ from Krongauz’s dyes.

Furthermore, Krongauz neither teaches nor suggests placing his dyes into cosmetic compositions. Rather, Krongauz teaches incorporating his dyes into polymeric materials such as plastic articles or optical lenses. (See, col. 2, lines 58-67). Consequently, Krongauz relates to a different field than the present invention ---

nowhere does Krongauz teach or suggest compositions having the properties (for example, toxicity and tolerance) required by cosmetic/makeup compositions. Given this, one skilled in the art would not have looked to guidance from Krongauz when attempting to formulate a cosmetic product.

For the foregoing reasons, Applicants respectfully submit that the pending rejection of the pending claims based upon non-analogous art which does not disclose the claimed dyes (like Krongauz) is improper and should be withdrawn.

Lagrange does not compensate for Krongauz's fatal deficiencies. Lagrange states that his compositions contain only thermally irreversible photochromic compounds which are diarylethene derivatives, not naphthopyran compounds. Thus, Lagrange discloses very structurally different dye compounds. For at least this reason, Lagrange and Krongauz cannot teach or suggest the claimed kits: neither reference discloses the required dyes, so their combination cannot result in the claimed kits.

Moreover, Lagrange's disclosure specifically excludes reversible photochromic compounds from his compositions. (See, col. 2, lines 59-62). This is consistent with the purpose of Lagrange's compositions which is to provide cosmetic compositions which exhibit little or no color change, whether the composition is exposed to UV radiation or not. (See, col. 2, lines 20-25). Given that Lagrange states that his compositions can contain only irreversible photochromic compounds, no motivation would have existed to use a structurally different reversible chromatic compound in his compositions, let alone to use such different types of dyes in separate compositions as required by the claimed invention. In fact, such a

combination would have rendered Lagrange's compositions unsuitable for their intended purpose. Under such circumstances, no motivation could have existed to combine Krongauz and Lagrange. See MPEP § 2143.01.

Similarly, Polonka does not compensate for Krongauz's and Lagrange's fatal deficiencies. Polonka, like Krongauz, relates to a field other than cosmetics and, thus, would not have been considered when formulating a cosmetic composition. Specifically, Polonka relates to corrosion resistant pigments useful in painting or coating compositions (col. 2, lines 52-54; col. 6, line 48). Nowhere does Polonka teach or suggest adding the required photochromic naphthopyran derivative to his compositions for any purpose, let alone for the purpose of making a cosmetic composition. In other words, Polonka merely relates to goniochromatic pigments, and neither teaches nor suggests the required naphthopyran derivatives or combining the required photochromic dyes with the required goniochromatic coloring agents. Thus, Polonka cannot compensate for the other references' deficiencies.

For all of the above reasons, Applicants respectfully request reconsideration and withdrawal of the §103 rejections.

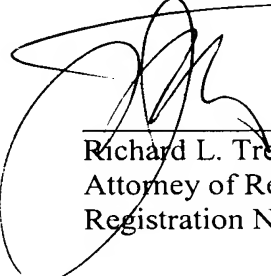
Application No. 10/687,632
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Applicants believe that the present application is in condition for allowance.

Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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